



## City of Powell, Ohio

### COUNCIL MINUTES NOVEMBER 9, 2006

A regular meeting of the Powell City Council was called to order at 7:32 p.m. by Mayor Don Grubbs. City Council members present included Richard Cline, Bill Morton, Elmer Meider, Art Schultz, and Dan Wiencek. Tom Counts arrived at 8:00 p.m. Also present were Steve Lutz, City Manager; Debra Miller, Finance Director; Powell Police Chief Gary Vest; Susie Ross, City Clerk; interested parties and members of the press.

### PLEDGE OF ALLEGIANCE

### CITIZEN PARTICIPATION

Bill Eddy, 140 West Olentangy Street, was present as a representative of the Action Committee calling for a stop to the merger between the Delaware Area Chamber of Commerce and Greater Powell Chamber of Commerce. He said he started his business in Powell three years ago and he moved to the center of town in June 2005. Mr. Eddy said one of the first things he did prior to opening his doors was to join the Chamber of Commerce. He said he worked in the hotel industry for fifteen years so he knows firsthand the importance of a Chamber, especially to tourism and community. He said after becoming a Chamber member he began to get business from other Chamber members. He said his business is improving and Powell needs a Chamber of Commerce which is dedicated to promote the success and well-being of its businesses and community. Mr. Eddy requested the City exercise their vote on this issue and he provided a proxy to the City Manager. He said Mr. Lutz will vote based on City Council's decision.

Councilman Wiencek said he recently read the proposed merger has been modified so there will be local area committees. He asked why that change does not fit Mr. Eddy's need. Mr. Eddy said in other areas where Chambers have merged, there was no representation from the smaller areas when there were economic issues. He said they focused on the larger city. He said he respects that the Delaware Area Chamber is a powerful and strong Chamber, but he has a hard time believing that anyone coming to do business in Powell would relocate here without a centrally located Chamber. Councilman Wiencek said the current Chamber supports the greater Powell area in Southern Delaware County and he asked if that area of focus is small enough. Mr. Eddy said the individuals in the surrounding areas came to the Olentangy Chamber to join their Chamber and get the Chamber's support for their businesses. He said he joined the Worthington Chamber for a year and they were a wonderful Chamber, but he did not get referral business.

Mayor Grubbs said it appears there will be a vote on Friday, November 17<sup>th</sup> so Council should discuss their recommendation this evening.

Mr. Eddy said it is important to understand that, according to the Chamber by-laws, they are required to give five days written notice to all Chamber members. He said the mailing day is included in that time span so some people may only receive three days notice to attend for the vote.

Mayor Grubbs closed the Citizen Participation period. He moved discussion forward in the agenda as there were members in the audience in support of Mr. Eddy's request.

Councilman Morton said a Chamber represents and benefits the local businesses and if the bulk of the membership wants the Chamber to remain in the area they should do so. He said it is important that the City helps keep the organization in town.

Councilman Wiencek said he has felt from the beginning that the Chamber merger is not in the best interest of the City of Powell. He said the City's perspective is to engender business and commerce within the City and that is the reason they are a member. He said he is firmly opposed to the merger.

Councilman Schultz asked if there was a financial reason the Chamber needed to merge. Steve Lutz, City Manager, said the information provided by the Chamber Board said that by merging a small, strong Chamber with a medium sized strong Chamber it would form a larger strong Chamber which would benefit everyone. He said they have presented the proposal in that fashion. Councilman Schultz said he could not see any reason the City would want to see the merger as it should be all about local control.

Councilman Cline said he concurs with the other Council members' comments. Councilman Meider said he does as well. He said he does not understand the benefits to Powell with the proposed merger. Mayor Grubbs concurred with the other comments. He said they have tried to communicate repeatedly with the Board members and Chamber and they received the same canned answers as those found in the flyer communications.

Mr. Lutz said the City will vote in a manner that will indicate they are not in favor of the proposed merger.

### **APPROVAL OF MINUTES**

The minutes of October 17, 2006 were approved as submitted.

### **NOVEMBER KID CITIZEN**

Mayor Grubbs said a November Kid Citizen will be selected and recognized at the November 21<sup>st</sup> Council Meeting.

### **RESOLUTION 2006-35: A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE DELAWARE, OHIO CITY PROSECUTOR'S OFFICE.**

Mr. Lutz said in the past the City has contracted with the Delaware City Prosecutor's office for handling cases. He said the proposed fee has not changed from \$140 per contested case, for an annual cost of approximately \$15k. Mr. Lutz said Police Chief Gary Vest is pleased with the arrangement with the prosecutor's office and Staff recommends approval of this resolution.

Mayor Grubbs asked how many contested cases the City has. Chief Vest said he does not have the specific data but they are misdemeanor cases as the County picks up the felonies. Debra Miller, Finance Director said it equals about 20-30 cases per quarter. Mr. Lutz said this is a very reasonable cost for services.

Mayor Grubbs opened this item for public comment. Hearing none, he closed the public comment session.

**MOTION: Councilman Cline moved to adopt Resolution 2006-35. Councilman Wiencek seconded the motion. By unanimous consent, Resolution 2006-35 was adopted.**

### **RESOLUTION 2006-36: A RESOLUTION AMENDING AND RENUMBERING RESOLUTION NUMBER 2006-32 ENTITLED "A RESOLUTION ACCEPTING THE AMOUNTS AND RATES AS DETERMINED BY THE BUDGET COMMISSION AND AUTHORIZING THE NECESSARY TAX LEVIES AND CERTIFYING THEM TO THE COUNTY AUDITOR."**

Mr. Lutz said in October, Council adopted Resolution 2006-32, authorizing the amounts and rates as determined by the Budget Commission and authorizing the necessary tax levies and certifying them to the County Auditor. He said the resolution which was adopted was incorrectly numbered through an administrative error and the proposed resolution will correctly renumber the resolution to 2006-37. He said all of the other terms and provisions of the original resolution as adopted will remain in force.

Councilman Cline clarified that the resolution Council is voting on is Resolution 2006-37 and that would create a duplicate number again. Susie Ross, City Clerk, stated that the agenda was numbered incorrectly as Resolution 2006-37 and should have been listed as Resolution 2006-36 on the agenda.

Mayor Grubbs opened this item for public comment. Hearing none, he closed the public comment session.

Councilman Wiencek asked if this error makes the City non-compliant as the original resolution was adopted in response to a deadline. Ms. Miller said it does not, as the County is not concerned with the resolution number.

**MOTION: Councilman Cline moved to adopt Resolution 2006-36. Councilman Wiencek seconded the motion. By unanimous consent, Resolution 2006-36 was adopted.**

Councilman Counts arrived at 8:00 p.m.

**RESOLUTION 2006-38: A RESOLUTION CERTIFYING WEED CONTROL ASSESSMENTS TO THE COUNTY AUDITOR.**

Mr. Lutz said in the City ordinances there is an ordinance regarding residents and businesses being required to cut their yard and if they do not do so they are notified by the Zoning Department. He said if they do not comply with City laws the Public Service Department cuts their grass and charges the property owner. He said if the City is unable to collect the fees, the ordinance establishes a manner in which the City can go through the County Auditor and collect the fees through a lien on the property. Mr. Lutz said they have reached that place with the three properties attached to the resolution. He said in the ordinance it states that an administrative fee of up to \$500 can be added to the costs and Staff proposes that for the first offense there is assessed a \$200 fee, the second offense a \$350 fee, and for three or more offenses a \$500 fee is charged.

Councilman Cline asked if the fees are assessed to each individual address. Mr. Lutz said he will check with the Law Director on that matter. He said two of the property owners have been charged the \$200 fee and one has been charged the \$350 fee as it is their second offense.

Mayor Grubbs opened this item for public comment. Hearing none, he closed the public comment session.

**MOTION: Councilman Cline moved to adopt Resolution 2006-38. Councilman Wiencek seconded the motion. By unanimous consent, Resolution 2006-38 was adopted.**

**RESOLUTION 2006-39: A RESOLUTION DISAPPROVING THE SEPTEMBER 28, 2006 APPLICATION SEEKING DESIGNATION OF A COMMUNITY ENTERTAINMENT DISTRICT WITHIN THE CITY OF POWELL.**

Mr. Lutz said the applicant for this request notified the City that the financing fell through for the restaurant which was looking to locate within the area and he will withdraw the request. He said if the City decides to deny the application it does not have impact on this establishment as their financing did not go through.

Mayor Grubbs said he provided a written recommendation for this application. He said the concept of a CED will probably be before Council again in the near future so he encouraged Council to start looking at this type of district and send it to Committee for discussion. He said the City is currently at their quota for liquor permits for bar/restaurant-type businesses so any new business of this type that wants to locate in the City will have to come in under a special permit or purchase a permit from someone else. Mayor Grubbs said the main concern in this application is the size of this proposed area. He said it is out of place for the purposes of the district as it encompasses 1/3 to 2/5 of the entire City within the CED. He said it would open 15 permit locations which more than doubles the current number of permits. Mayor Grubbs said this would also allow the City to have limited control over what types of businesses can locate within the district. He said he recommends disapproval of this particular application but considers looking at the City Zoning Code to look at other possible configurations or boundaries where a CED might be located.

Councilman Meider asked about the D-5I liquor permit. Mayor Grubbs said there is a section of the code which allows a D-5I permit for larger chain-type restaurant establishments which focus mainly on food. He said this special permit requires specific criteria and if the establishment meets the criteria the permit is issued, regardless of quotas.

Councilman Wiencek said this proposal is very different from the existing CEDs in the state. He said he can see supporting a CED to encourage the kind of development they are looking for to the downtown area but he will need to be convinced some of the other areas need a CED to encourage development.

Mayor Grubbs opened this item for public comment. Hearing none, he closed the public comment session.

Councilman Cline said if he understands the statutory summary correctly, the City must act by December 5<sup>th</sup>. He asked if it would be deemed approved if the City fails to approve or disapprove by that date.

Mayor Grubbs said this is unclear. Councilman Cline said this concept is one the City should be exploring as he sees an area such as the restaurant corridor in Grandview as a natural fit for this community. He said he agrees with the comment that the geographic area of this application is wrong. He suggested the Council affirmatively vote this resolution down but this concept is something Council should give further consideration.

Councilman Schultz said he is generally in support of allowing more liquor permits if the City can control the types of establishments. He said he understands the use of this type of district as a focused entertainment district as well as a vehicle to allow more businesses that need the permits to come in. He said he is not entirely convinced that this is a bad thing. He suggested they put the application on hold to allow more time to think about the consequences.

Councilman Meider said he used to work near Grandview and they have wonderful small restaurants which might not be able to get a liquor permit in this area. He said the diversity of restaurants would be great for this community. He said he would hate to think they are forcing themselves into only chain restaurants and precluding themselves from unique establishments.

Councilman Wiencek suggested they should be tabling this in anticipation of a written withdrawal of the application so they are not creating reasons for disapproval. Councilman Counts said he does not have an issue with the concept but they should take time to study it and make sure it is appropriate for what Council sees happening. Councilman Morton said they should facilitate desirable businesses to enter the community but perhaps there is a better way to identify the area they want to target. He said he thinks they do not have enough information and if they find fault with this application it may help those who may have a position against a proposed CED in the future.

Mayor Grubbs said he is uncomfortable with the unclear way the statute appears to be worded regarding the City's response. He asked Mr. Lutz if Staff has published this item. Mr. Lutz said they have not. Mayor Grubbs said within 30 days of the recommendation, the City is required to publish the item for two weeks, notifying the public when the public hearing will be held. He said Council will have to make a determination by December 5<sup>th</sup>. Councilman Cline said they should move to table the resolution but he also encouraged the City Manager to contact the applicant to see if they intend to withdraw. He said Legal Counsel should be able to determine if that removes the obligation of the statute and if it does, he agrees that it makes sense to proceed that way. He said it is his understanding that a vote to deny this particular application does not pre-judge any future application, even one that is virtually identical. Mayor Grubbs said a rejection also allows the applicant to make changes and resubmit the application.

**MOTION: Councilman Cline moved to table Resolution 2006-39 to the regularly scheduled Council Meeting on December 5, 2006. Councilman Counts seconded the motion. By unanimous consent, Resolution 2006-39 was tabled.**

Councilman Schultz suggested the Development Committee look at this type of proposal and provide an opinion to Council.

**FIRST READING: ORDINANCE 2006-66: AN ORDINANCE AUTHORIZING AMENDMENT TO THE FEE SCHEDULE OF THE MUNICIPALITY OF POWELL.**

Mr. Lutz said the City reviews and updates the fee schedule each year so it provides the actual costs of providing services. He said the Finance Committee reviewed the proposed fee schedule two weeks ago.

Ms. Miller provided a review regarding the proposed amendments and additions to the fee schedule. She described the specific changes to page 7, item A(2) regarding Park Fee in Lieu of Dedication as the numbers had been recalculated. Mr. Lutz said Staff recommends this item be taken to a second reading and the next Council packets will include the updated information. He said it has also been requested by a member of the Finance Committee that Staff take a closer look at the Business Registration requirements. He said Finance Committee will review that at their meeting next week.

Councilman Wiencek said he discussed in the Finance Committee his concern that poorly engineered plans were being re-engineered by the City Engineering Department, at significant cost and time to the City. He said it is important to have a mechanism to reject plans and require a resubmittal fee if needed. He asked if that was addressed in this fee schedule. Mr. Lutz said he discussed it with the City Engineer and he feels the way this is structured the City receives the money they should. Mr. Lutz said the City Engineer will be present at the second reading to address this question.

Councilman Wiencek noted that the last sentence under Recreation Rental Fees was added to give the Director of Parks and Recreation the ability to negotiate long-term fees for users if he feels it is appropriate. Councilman Cline said the Finance Committee felt the scheduled fees should be one-time use but long time contracts should be left to the discretion of Staff. He said this line legislatively authorizes Staff to exercise that discretion. Mayor Grubbs asked how this fee originated. Mr. Lutz said Staff surveyed other communities to find out how they handled park reservations. He said a permit guarantees use of the facility during a specific time period if someone wants to reserve an athletic field for an activity or event. He said the fees will help repair wear and tear of the area. Mr. Lutz said a permit is issued and if there is any issue as to who has the area reserved, the police department will be available to determine the user. Councilman Counts said they also want to discourage "professional" reservations at City parks for private lessons. Councilman Cline said park facilities are first come/first served unless someone wants to reserve an area for a private use such as a birthday party.

Councilman Schultz asked how a reservation is proven in the event of a challenge. Mr. Lutz said the City issues a permit which would be shown to the Police Officer. Councilman Meider said they may want to add wording to indicate this area of the Fee Schedule is for the reserved use of parks and recreation facilities.

Mayor Grubbs said another item to be added would be a fee for Application for a Community Entertainment District. He asked how that fee would be established. Mr. Lutz said he will consult the City Law Director. Councilman Cline asked that the Law Director be asked about adding a schedule which could be added to cover such items. Mr. Lutz said it may be able to be a Miscellaneous Unscheduled Fee as determined by the City Manager which varies within a set dollar range.

This item was taken to a second reading.

**FIRST READING: ORDINANCE 2006-67: AN ORDINANCE REQUIRING REGISTRATION OF BUSINESSES WITHIN THE MUNICIPALITY OF POWELL, OHIO.**

Mr. Lutz said this ordinance will be taken to second reading. He said there were concerns regarding how this ordinance was written. He said the intent of the ordinance is that there would be an initial fee of \$25 for a business to register with the City and there would be no renewal fee as long as the permit was renewed by July 31<sup>st</sup> the following year. Mr. Lutz said this would allow the City to keep track of businesses for various Zoning, Police, and Tax Collection reasons.

Councilman Counts described the reasons for his concern regarding the ordinance. He said this ordinance does not provide an adequate description of "business" which relates to the intent of the registration. He said the description is vague enough that it may require registration of children who have a paper route. Councilman Counts said they may want to consider a threshold under which no registration would be required. Councilman Cline said it also talks about any business conducted at a residence and that would encompass those who perform work from home. Councilman Morton said it would also include anyone who sells or buys something on e-bay. He asked what the intent is for collecting this information. Mr. Lutz said an example is that the police officers spend a lot of time going around to businesses each year to update the information on their alarm systems and this information could be used to accomplish that. He recommended this item go back to Committee to discuss the identified concerns.

Ms. Miller said this legislation is basically a boilerplate which she found and the thought process was that they could accomplish a registration which would be a data-gathering tool. She said many communities have registration for a fee and that was not their purpose. She said they hoped to gather information to fit the needs of the different departments.

Councilman Morton asked if they are targeting established businesses. Ms. Miller said they are. Councilman Schultz said it could also be people conducting business out of their house. Councilman Morton said it would be difficult to determine the definition of a business and it is much more complex than it used to be. Councilman Cline said Section 1 is really the cause for concern and it may be that section cannot be fixed. He said they must ask whose information they want to capture and why they want to capture it. Mayor Grubbs asked about the penalty. Ms. Miller said if they find the business after July 31<sup>st</sup> they would have to pay the \$25 fee. Discussion continued regarding clarifying the definition of "business" and alternate sources for the desired information.

**MOTION: Councilman Cline moved to table Ordinance 2006-67 to the first regularly scheduled Council Meeting in February 2007 and to refer the Ordinance to the Finance Committee. Councilman Counts seconded the motion.**

**VOTE: Y 7 N 0**

**FIRST READING: ORDINANCE 2006-68: AN ORDINANCE MODIFYING APPROPRIATIONS FOR THE CALENDAR YEAR 2006.**

Mr. Lutz said the majority of the proposed appropriation changes are cases where the City has the revenue coming in but does not have the funds appropriated in the expenditure column. Ms. Miller reviewed the appropriation modifications within the ordinance.

Councilman Wiencek confirmed the refunds given for building permits exclude any administrative fees. Ms. Miller said it is not a 100% refund as there is a small fee they deduct. Mr. Lutz said if the plans were sent out for contracted review the applicant does not receive a refund of those charges as well.

Councilman Morton asked for clarification regarding meeting room deposit and deck escrow refunds. Ms. Miller described their purpose and the funding source for the monies to be refunded.

Councilman Counts said he finds it odd that the Finance Department has to come to Council to receive increased authority in this manner. Mr. Lutz said they could put higher values in the budget. Ms. Miller said they did in the proposed 2007 budget because of the trends seen. She said the agency funds are a guess because the funding is totally dependent upon someone else's request for a refund. She said Staff could investigate whether agency funds have to be appropriated.

Mayor Grubbs opened this item for public comment. Hearing none, he closed the public comment session.

Councilman Cline said he shares the frustration of his colleagues but in the past Finance Directors have tried to solve this problem and they have been rebuffed by either the State Auditor or Legal Counsel. He said they could set artificially high standards at the beginning of the budget but that skews the picture of the budget. Councilman Wiencek asked if they should consider amending the Consent Agenda to allow this type of legislation. He said the legislation could always be pulled from the Consent Agenda for discussion.

**MOTION: Councilman Cline moved to suspend the rules in regards to Ordinance 2006-68. Councilman Counts seconded the motion.**

**VOTE: Y 7 N 0**

**MOTION: Councilman Cline moved to adopt Ordinance 2006-68. Councilman Counts seconded the motion.**

**VOTE: Y 7 N 0**

**SECOND READING: ORDINANCE 2006-65: AN ORDINANCE RATIFYING THE MAINTENANCE AGREEMENT BETWEEN THE CITY OF POWELL AND LIBERTY TOWNSHIP REGARDING THE RUTHERFORD ROAD PEDESTRIAN TUNNEL.**

Mr. Lutz said this item was discussed at the last Council meeting. He said the City would be responsible for the tunnel and the Township would be responsible for the road. Mr. Lutz said there were questions raised which were directed to the Law Director. He said Mr. Molnar is working with the Township Legal Counsel to make the revisions and it should be ready for Council on December 5. He recommended that Counsel consider tabling this legislation to that date.

Mayor Grubbs opened this item for public comment. Hearing none, he closed the public comment session.

**MOTION: Councilman Cline moved to table Ordinance 2006-65 to the regularly scheduled Council Meeting on December 5, 2006. Councilman Counts seconded the motion.**

**VOTE: Y 7 N 0**

## COMMITTEE REPORTS

**Development Committee:** Councilman Schultz said they discussed the Bike Paths on both sides of West Powell Road and Staff advised them the engineering is almost done and they are working on the last two easements. He said discussions have continued with CSX and their consultants and the Ohio Railway Development Committee. Mr. Lutz said they should be ready to go out to bid this winter for the spring construction season.

Councilman Schultz said they also discussed issues regarding the Murphy Park and Sawmill Road intersection. He said an ordinance was passed a long time ago that contained an issue that when Murphy Parkway and Liberty Road were connected, a chain of events would occur. He said that included City-funded construction of an entry feature at Presidential Parkway and Sawmill Road. He said the residents of the Woods of Sawmill are considering whether they want to construct the entry feature at the homeowners' expense. Councilman Morton clarified there is a group within the Homeowners' Association which wants to move forward on the entry feature but there is also a group that feels quite differently. He said they wanted to get the opinion of the Development Committee. Councilman Schultz said the Committee did not have a problem with the community paying for and constructing the entry feature but it would require modifying the ordinance in some way. He said part of the ordinance included a road block at Winter Hill and Council may want to modify the ordinance to allow the removal of the road block as well. He said the Committee would like the opinion of Council to see how Staff should proceed. Mayor Grubbs said the consultant work for the four-corners is proceeding well and they may want to revisit whether the four-corners comes before Murphy Parkway or vice-versa. Council indicated they would support allowing the Homeowners' Association to fund and construct the entry feature.

*Next Meeting: December 5<sup>th</sup>, 6:30 p.m.*

**Finance Committee:** Councilman Cline said the Committee discussed the Fee Schedule changes before Council and they reviewed the budget. He said they will continue that budget review at the November 14<sup>th</sup> meeting. He said he has received most of the input regarding the Capital Improvement Budget. Councilman Morton asked about the Police Building and renovations. Mr. Lutz said it is going well and they are right on schedule to complete the project by April. He said they are also on budget and most of the unforeseen conditions should have been determined.

*Next Meeting: November 14<sup>th</sup>, 7:30 p.m.*

**Operations Committee:** Councilman Counts said the Committee discussed the building permit process and they have requested more information from Staff regarding response time periods. *Next Meeting: December 4<sup>th</sup>, 7:30 a.m.*

**Downtown Committee:** Mayor Grubbs said Anna Steck is on staff now and positive things are happening. Mr. Lutz said she will be coordinating the four sub-committees and they will be alerting the public that they are seeking volunteers to serve on those sub-committees.

*Next Meeting: December 13<sup>th</sup>, 6:30 p.m.*

## CITY MANAGER'S REPORT

Mr. Lutz said the State Clean Air legislation was approved and it is very similar to the City's legislation. He said Staff has not reviewed the new legislation to determine the major changes. Councilman Wiencek said the State legislation does not deal with outdoor patios at all and the City legislation prohibits smoking in outdoor patios that are immediately adjacent to the point of ingress.

## OTHER COUNCIL MATTERS

Councilman Wiencek commended the City Manager and Staff for the handling of the incident on Halloween evening. Councilman Counts said he heard input from non-Powell residents commending Chief Vest's manner of handling the situation. Mayor Grubbs said it would be appropriate to send written correspondence to Chief Vest, Staff, and the other safety services who responded to convey Council's appreciation for the way the situation was handled. Mr. Lutz said Staff would prepare the correspondence.

**MOTION:** Councilman Cline moved to adjourn into Executive Session in accordance with ORC Section 121.22(G)(1), Personnel Matters, at 9:24 p.m. Councilman Counts seconded the motion.

**VOTE:**            Y   7              N   0  

**MOTION:** Councilman Cline moved to adjourn from Executive Session at 9:45 p.m. Councilman Counts seconded the motion.

**VOTE:**            Y   7              N   0

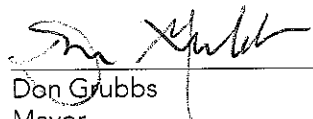
MOTION: Councilman Cline moved to reconvene in Regular Open Session at 9:46 p.m. Councilman Counts seconded the motion.

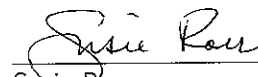
VOTE: Y 7 N 0

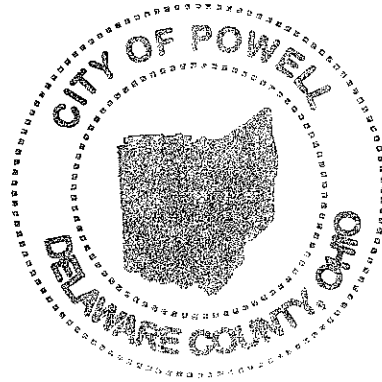
MOTION: Councilman Cline moved to adjourn from Regular Open Session 9:47 p.m. Councilman Counts seconded the motion.

VOTE: Y 7 N 0

DATE MINUTES APPROVED:

  
\_\_\_\_\_  
Don Grubbs  
Mayor  
12-5-06  
Date

  
\_\_\_\_\_  
Susie Ross  
City Clerk  
12-5-06  
Date



**City Council**

Don Grubbs, Mayor

Richard Cline

Tom Counts

Elmer Meider

Bill Morton

Art Schultz

Dan Wiencek